

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

TONY NGUYEN,

**Plaintiff,**

CASE NO. 15cv758-LAB (RBB)

LVNV FUNDING, LLC, et al.,

## Defendants.

## **ORDER GRANTING SUMMARY JUDGMENT**

When Tony Nguyen failed to pay about \$35,000 in credit card debt, LVNV Funding hired a collection firm to recover the debt. The Firm filed two collection actions in California state court alleging Nguyen's debts became due within the four year statute of limitations. Nguyen consulted counsel who advised him not to respond. The clerk entered default judgments. Nguyen moved to set them aside. After a hearing, the state trial court upheld the judgments. The state appellate court held oral argument and affirmed. Nguyen never raised the statute of limitations issue in the state proceedings. [See Dkts. 74, 83.]

23 As things stand, LVNV holds a final judgment from a California court ordering Nguyen  
24 to pay LVNV about \$35,000. Nguyen has now filed an action under the Fair Debt Collection  
25 Practices Act in this Court. He doesn't deny that he owes the money. Instead, he theorizes  
26 that Defendants violated the FDCPA by allegedly filing the state court collection actions  
27 beyond the statute of limitations. Defendants have moved for summary judgment alleging  
28 that Nguyen is collaterally estopped from raising the statute of limitations issue in this action.

1       Federal courts must defer “to the preclusion law of the State in which judgment was  
2 rendered.” *Marrese v. Am. Acad. of Orthopaedic Surgeons*, 470 U.S. 373, 380 (1985); 28  
3 U.S.C. § 1738. Under California law, the collateral estoppel doctrine bars courts from  
4 reconsidering issues that were “actually litigated and determined in the first action.” *Murray*  
5 *v. Alaska Airlines, Inc.*, 50 Cal. 4th 860, 867 (2010).

6       The sticking point here is that the California courts entered a default judgment against  
7 Nguyen. Given the strong preference for resolving disputes on the merits, it seems incorrect  
8 to say the statute of limitations issue was actually litigated and determined. But in California,  
9 the rule is clear: “Even a judgment of default in a civil proceeding is res judicata as to *all*  
10 issues aptly pleaded in the complaint and defendant is estopped from denying in a  
11 subsequent action *any* allegations contained in the former complaint.” *Murray*, 50 Cal. 4th  
12 at 871 (quotations omitted; emphasis added). Since LVNV pleaded that the collection  
13 actions were timely, and default judgment was entered and affirmed, *Murray* compels the  
14 conclusion that Nguyen is estopped from denying the timeliness of the state actions in this  
15 case. [Dkts. 73-2 at 59, 62.]<sup>1</sup>

16       Nguyen’s primary counterargument is that there’s an exception to the broad rule  
17 articulated in *Murray*: default judgments don’t affect defenses pleaded in the complaint. He  
18 maintains that since the statute of limitations is an affirmative defense, collateral estoppel  
19 doesn’t bar him from raising that issue as the basis for this action. For support, he relies on  
20 *Four Star Electric v. F & H Construction*:

21       It is well settled that allegations of a complaint which anticipate or negate new  
22 matter are superfluous. The only allegations essential to a complaint are those  
23 required in stating the cause of action, and allegations inserted for the purpose  
24 of intercepting and cutting off a defense are superfluous and immaterial. The  
25 matter alleged may be material in the case, but immaterial in the complaint, and  
26 a plaintiff cannot by pleading such matter at the outset call upon the defendant  
27 to answer it.  
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26       <sup>1</sup> See also *In re Younie*, 211 B.R. 367, 375 (B.A.P. 9th Cir. 1997), aff’d, 163 F.3d 609 (9th  
27 Cir. 1998) (“In California, a default judgment satisfies the ‘actually litigated’ requirement for  
28 the application of collateral estoppel.”); *Fields v. Retailers Credit*, 465 F. App’x 710 (9th Cir.  
2012) (debt dispute decided by default judgment precluded by collateral estoppel).

1     Four Star Elec., Inc. v. F & H Constr., 7 Cal. App. 4th 1375, 1382 (1992). The Court doesn't  
2     find *Four Star* controlling for two reasons.

3                 First, Nguyen hasn't offered any analysis on how to square *Four Star* with the  
4     categorical language in *Murray* that says any and all issues pleaded are considered res  
5     judicata when a default judgment is entered. Second, assuming *Four Star* does carve-out  
6     an exception, it doesn't apply in this case. That's because Defendants filled out check-the-  
7     box complaints approved by the Judicial Council of California that *required* Defendants to  
8     affirm that their collection actions were filed within the last four years. See Cal. Civ. Proc.  
9     Code § 425.12 and § 1911. That context matters. The Court can't say Defendants added  
10    surplusage or immaterial allegations as a sneaky way to avoid the *Four Star* exception.  
11    Rather, Defendants checked a box on a court-approved form complaint certifying essentially  
12    two allegations: Nguyen owed them money, and it became due within the last four years.  
13    [Dkts. 74-1 at 7, 74-9 at 7; attached as Appendix A.]

14                 While the Court understands Nguyen's argument—the California courts only decided  
15    that he owed money to LVNV, not whether the actions were filed on time—that distinction  
16    doesn't hold up. Under *Murray*, when the California courts denied Nguyen's request to set  
17    the default aside, they necessarily found Nguyen owed LVNV \$35,000. They also implicitly  
18    found that LVNV's decision to file the state court collection actions was timely and lawful.  
19    For this Court to now repudiate the state courts' findings is exactly the type of second  
20    guessing the collateral estoppel doctrine is designed to prevent. "A party cannot by  
21    negligence or design withhold issues and litigate them in consecutive actions. Hence the  
22    rule is that the prior judgment is res judicata on matters which were raised or could have  
23    been raised, on matters litigated or litigable." *Mitchell v. Jones*, 172 Cal. App. 2d 580, 585  
24    (1959) (but noting, as in *Four Star*, an exception for any unnecessary defense).

25                 The California Supreme Court has explained that courts should consider two  
26    overarching concerns when invoking collateral estoppel. "Ultimately, the inquiry that must  
27    be made is whether the traditional requirements and policy reasons for applying the  
28    collateral estoppel doctrine have been satisfied by the particular circumstances of [the]

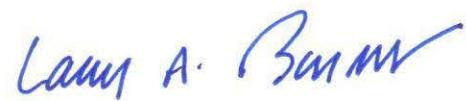
1 case." *Murray*, 50 Cal. 4th at 868. And "it is the *opportunity to litigate* that is important in  
2 these cases, not whether the litigant availed himself or herself of the opportunity." *Murray*,  
3 50 Cal. 4th at 869. Finding that Nguyen is collaterally estopped here comports with both  
4 concerns. By refusing to allow him to litigate the statute of limitations issue, the Court is  
5 "conserving judicial resources and promoting judicial economy by minimizing repetitive  
6 litigation, preventing inconsistent judgments which undermine the integrity of the judicial  
7 system, and avoiding the harassment of parties through repeated litigation." *Id.* at 879.  
8 Nguyen had three opportunities to raise his statute of limitations concern with the California  
9 courts. He chose not to. The Fair Debt Collection Practices Act doesn't function to provide  
10 litigants with a second chance to try out new arguments in federal court after failing to raise  
11 them in state court.

12 \* \* \*

13 Since there's no dispute as to any material fact and the Defendants are entitled to  
14 judgment as a matter of law, their motion for summary judgment is **GRANTED** [Dkts. 71,  
15 73]; plaintiff's motion is **DENIED**. [Dkt. 76.] Fed. R. Civ. P. 56. Because Nguyen's Rosenthal  
16 Act claim mimics the Fair Debt Collection Practices Act, the Court grants Defendants'  
17 summary judgment on both claims. See *Gates v. MCT Grp., Inc.*, 678 F. App'x 539, 541 (9th  
18 Cir. 2017).<sup>2</sup>

19 **IT IS SO ORDERED.**

20 Dated: *2-5-18*



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21 HONORABLE LARRY ALAN BURNS  
22 United States District Judge

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26 <sup>2</sup> The Court stayed this action pending the Ninth Circuit's ruling in *Ordinario v. LVNV*  
27 *Funding, LLC*, 2016 WL 852843, at \*2 (S.D. Cal. Mar. 4, 2016). The Ninth affirmed, but  
28 didn't address whether an FDCPA action premised on an untimely state action is unavailable  
when the plaintiff waives the statute of limitations defense in state court. Since the collateral  
estoppel argument here turns on a similar ground — Nguyen had an opportunity to raise the  
defense but didn't — the Court doesn't address the waiver issue.

## **Appendix A**

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SHORT TITLE:  
LVNV FUNDING LLC v.  
TONY NGUYEN

CASE NUMBER:

FIRST  
(number)

## CAUSE OF ACTION - Common Counts

ATTACHMENT TO [X] Complaint [ ] Cross-Complaint

(Use a separate cause of action form for each cause of action.)

CC-1. Plaintiff (name):

LVNV FUNDING LLC

alleges that defendant (name):

TONY NGUYEN

became indebted to [ ] plaintiff [X] other (name): Citibank (South Dakota) N.A. OR A PREDECESSOR IN INTEREST

a. [X] within the last four years

(1) [X] on an open book account for money due.

(2) [X] because an account was stated in writing by and between plaintiff and defendant in which it was agreed that defendant was indebted to plaintiff.

b. [X] within the last [ ] two years [X] four years

(1) [X] for money had and received by defendant for the use and benefit of plaintiff.

(2) [X] for work, labor, services and materials rendered at the special instance and request of defendant and for which defendant promised to pay plaintiff

[X] the sum of \$ \$18,382.67

[ ] the reasonable value.

(3) [X] for goods, wares, and merchandise sold and delivered to defendant and for which defendant promised to pay plaintiff

[X] the sum of \$ \$18,382.67

[ ] the reasonable value.

(4) [X] for money lent by plaintiff to defendant at defendant's request.

(5) [X] for money paid, laid out, and expended to or for defendant at defendant's special instance and request.

(6) [ ] other (specify):

CC-2. \$ \$18,382.67 , which is the reasonable value, is due and unpaid despite plaintiff's demand, plus prejudgment interest [ ] according to proof [X] at the rate of 0.0000 percent per year from (date): May 20, 2011

CC-3. [ ] Plaintiff is entitled to attorney fees by an agreement or a statute

[ ] of \$

[ ] according to proof.

CC-4. [X] Other:

PLAINTIFF PURCHASED THE ACCOUNT FROM THE ORIGINAL CREDITOR OR ITS SUCCESSOR(S) IN INTEREST. PLAINTIFF IS THE CURRENT OWNER OF THE ACCOUNT.

SHORT TITLE: LVNV FUNDING LLC v. TONY NGUYEN	CASE NUMBER:
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FIRST \_\_\_\_\_ **CAUSE OF ACTION - Common Counts**  
(number)

ATTACHMENT TO  Complaint  Cross-Complaint

(Use a separate cause of action form for each cause of action.)

CC-1. Plaintiff (name):

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became indebted to  plaintiff  other (name): Citibank (South Dakota) N.A. OR A PREDECESSOR IN INTEREST

a.  within the last four years

(1)  on an open book account for money due.

(2)  because an account was stated in writing by and between plaintiff and defendant in which it was agreed that defendant was indebted to plaintiff.

b.  within the last  two years  four years

(1)  for money had and received by defendant for the use and benefit of plaintiff.

(2)  for work, labor, services and materials rendered at the special instance and request of defendant and for which defendant promised to pay plaintiff

the sum of \$ \$15,202.65

the reasonable value.

(3)  for goods, wares, and merchandise sold and delivered to defendant and for which defendant promised to pay plaintiff

the sum of \$ \$15,202.65

the reasonable value.

(4)  for money lent by plaintiff to defendant at defendant's request.

(5)  for money paid, laid out, and expended to or for defendant at defendant's special instance and request.

(6)  other (specify):

CC-2. \$ \$15,202.65 , which is the reasonable value, is due and unpaid despite plaintiff's demand, plus prejudgment interest  according to proof  at the rate of 0.0000 percent per year from (date): May 20, 2011

CC-3.  Plaintiff is entitled to attorney fees by an agreement or a statute

of \$

according to proof.

CC-4.  Other:

PLAINTIFF PURCHASED THE ACCOUNT FROM THE ORIGINAL CREDITOR OR ITS SUCCESSOR(S) IN INTEREST. PLAINTIFF IS THE CURRENT OWNER OF THE ACCOUNT.